

- (1) Purchasing the material; or
- (2) Purchasing the use of the material through leasing or other means; and
- (d) State that payment to providers will be made in accordance with part 447 of this chapter.

**§ 434.12 Contracts with private non-medical institutions.**

Contracts with private nonmedical institutions must—

- (a) Meet the requirements of § 434.6;
- (b) Specify a capitation fee based on the cost of the services provided, in accordance with the reimbursement requirements prescribed in part 447 of this chapter; and
- (c) Specify when the capitation fee must be paid.

**§ 434.14 [Reserved]**

**Subpart C [Reserved]**

**Subpart D—Contracts With Health Insuring Organizations**

**§ 434.40 Contract requirements.**

(a) Contracts with health insuring organizations that are not subject to the requirements in section 1903(m)(2)(A) must:

- (1) Meet the general requirements for all contracts and subcontracts specified in § 434.6;
- (2) Specify that the contractor assumes at least part of the underwriting risk and;
  - (i) If the contractor assumes the full underwriting risk, specify that payment of the capitation fees to the contractor during the contract period constitutes full payment by the agency for the cost of medical services provided under the contract;
  - (ii) If the contractor assumes less than the full underwriting risk, specify how the risk is apportioned between the agency and the contractor;
- (3) Specify whether the contractor returns to the agency part of any savings remaining after the allowable costs are deducted from the capitations fees, and if savings are returned, the apportionment between agency and the contractor; and

(4) Specify the extent, if any, to which the contractor may obtain reinsurance of a portion of the underwriting risk.

(b) The contract must—

(1) Specify that the capitation fee will not exceed the limits set forth under part 447 of this chapter.

(2) Specify that, except as permitted under paragraph (b) of this section, the capitation fee paid on behalf of each recipient may not be renegotiated—

- (i) During the contract period if the contract period is 1 year or less; or
- (ii) More often than annually if the contract period is for more than 1 year.

(3) Specify that the capitation fee will not include any amount for recoupment of any specific losses suffered by the contractor for risks assumed under the same contract or a prior contract with the agency; and

(4) Specify the actuarial basis for computation of the capitation fee.

(c) The capitation fee may be renegotiated more frequently than annually for recipients who are not enrolled at the time of renegotiation or if the renegotiation is required by changes in Federal or State law.

[55 FR 51295, Dec. 13, 1990]

**Subpart E [Reserved]**

**Subpart F—Federal Financial Participation**

SOURCE: 48 FR 54020, Nov. 20, 1983, unless otherwise noted. Redesignated at 55 FR 51295, Dec. 13, 1990.

**§ 434.70 Conditions for Federal Financial Participation (FFP).**

(a) *Basic requirements.* FFP is available only for periods during which the contract—

- (1) Meets the requirements of this part;
- (2) Meets the applicable requirements of 45 CFR part 74; and
- (3) Is in effect.

(b) *Basis for withholding.* CMS may withhold FFP for any period during which the State fails to meet the State plan requirements of this part.

[67 FR 41095, June 14, 2002]